

**State of California
Office of Administrative Law**

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:

Amend sections: 1038, 1052.1

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2015-0701-02

OAL Matter Type: Emergency (E)

Summary of Rulemaking

The Board of Forestry and Fire Protection submitted this emergency rulemaking action to amend sections in title 14 of the California Code of Regulations to add drought as a condition that constitutes an emergency, as well as regulations applicable to the harvesting of dead and dying trees in response to drought related stress.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 7/13/2015 and will expire on 1/12/2016. The Certificate of Compliance for this action is due no later than 1/11/2016.

Date: July 13, 2015


**Beverly J. Johnson
Deputy Director**

**For: DEBRA M. CORNEZ
Director**

**Original: George Gentry
Copy: Thambi Borrás**

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2015-0701-02E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 13 2015

2:14 pm

2015 JUL -1 AM 10:34
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY Board of Forestry and Fire Protection	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Drought Mortality Amendments, 2015	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	1038 and 1052.1
TITLE(S)	REPEAL
14	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input checked="" type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Thembi Borrás	TELEPHONE NUMBER 916-653-9633	FAX NUMBER (Optional) 916-653-0989	E-MAIL ADDRESS (Optional) thembi.borras@bof.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Thembi Borrás</i>	DATE July 1, 2015
TYPED NAME AND TITLE OF SIGNATORY Thembi Borrás, Regulations Coordinator, Board of Forestry and Fire Protection	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 13 2015

Office of Administrative Law

1 **Board of Forestry and Fire Protection**

2 **“Drought Mortality Amendments, 2015”**

3 **Title 14 of the California Code of Regulations (14 CCR):**

4 **Division 1.5, Chapter 4, Subchapter 7,**

5 **Article 2 – Timber Harvesting Plan**

6
7 **Amend:**

8 **§ 1038. Exemption.**

9 **§ 1052.1. Emergency Conditions.**

10
11 **1038**

12 Persons who conduct the following types of timber operations are exempt from the plan
13 preparation and submission requirements (PRC § 4581) and from the completion report
14 and stocking report requirements (PRC §§ 4585 and 4587) of the Act with the following
15 exceptions and requirements:

16 (i) no tree that existed before 1800 A.D. and is greater than sixty (60) inches in diameter
17 at stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in diameter
18 at stump height for all other tree species shall be harvested unless done so under the
19 conditions or criteria set forth in subsection 1038(h).

20 (ii) all timber operations conducted in the Lake Tahoe Region pursuant to 14 CCR §
21 1038 must have a valid Tahoe Basin Tree Removal Permit (as defined by the Tahoe
22 Regional Planning Agency) or shall be conducted under a valid TRPA Memorandum of
23 Understanding (MOU), when such a permit is required by TRPA.

1 ****** (k) Harvesting dead or dying trees in response to drought related stress of any**
2 **size, fuelwood or split products. The provisions of this exemption supersede the**
3 **provisions of any other exemptions that are in the same harvest area footprint. In**
4 **addition to compliance with 14 CCR § 1038.1, and the limitations listed in 1038(b)(1)-**
5 **(10), the following apply:**

6 **(1) The exemption shall include the requirements of 14 CCR § 1038.2(a)-(c),**
7 **total acreage of the exemption harvest area (as defined in 14 CCR § 895.1), and an**
8 **enlarged 7½ minute quadrangle map or its equivalent that is not less than one (1) inch**
9 **equals 1,000 feet showing the location of the harvest area. For projects that require a**
10 **Registered Professional Forester (RPF), pursuant to 14 CCR § 1038(k)(7), the location**
11 **of timber operations and watercourses, including watercourse classification, shall also**
12 **be shown on this map.**

13 **(2) The exemption shall include a signature of the landowner certifying that they**
14 **are the landowner.**

15 **(3) Trees eligible for removal shall meet one or more of the following conditions:**

16 **(A) Trees that are dead, or,**

17 **(B) Trees with fifty (50%) percent or more of the foliage-bearing crown**
18 **that is dead or fading in color from a normal green to yellow, sorrel, or brown, excluding**
19 **normal autumn coloration changes, or with evidence of successful bark beetle attacks,**
20 **through indications of dead cambium and brood development distributed around the**
21 **circumference of the bole, or;**

22 **(C) The RPF, in writing, in the Notice of Exemption, certifies the following:**

23 **1. Trees designated by an RPF as likely to die due to drought**
24 **related stress, within one year, or,**

25 **2. Trees marked in accordance with 14 CCR § 1038(b)(9), or,**

1 3. Trees marked by an RPF in accordance 14 CCR § 1038(h).

2 (4) Retain an average for the harvest area of not less than one (1) decadent and
3 deformed tree of value to wildlife (as defined in 14 CCR § 895.1) , snag, or dying tree
4 per acre that is greater than sixteen (16) inches DBH (diameter breast height) and
5 twenty (20) feet tall. This provision does not apply within one hundred (100) feet of
6 habitable structures, roads, fire suppression ridges, and infrastructure facilities such as
7 transmission lines and towers, or water conveyance and storage facilities.

8 (5) The exemption shall include the tentative commencement date of timber
9 operations on the notice required in 14 CCR § 1038.2. Within a 15 day period before
10 beginning timber operations, the timber operator shall notify the Department of the
11 actual commencement date for the start of operations.

12 (6) Operations pursuant to this exemption may not commence for five (5)
13 working days from the date of the Director's receipt of the Notice of Exemption unless
14 this delay is waived by the Director, after consultation with other state agencies. The
15 Director shall determine whether the Notice of Exemption is complete, and if so, shall
16 send a copy of a notice of acceptance to the submitter. If the Notice of Exemption is not
17 complete and accurate, it shall be returned to the submitter and the timber operator may
18 not proceed. If the Director does not act within five days of receipt of the Notice of
19 Exemption, timber operations may commence.

20 (7) The exemption shall be submitted by an RPF, and include the following,
21 when timber operations on a cumulative harvest area exceeds twenty (20) acres per
22 total contiguous ownership.

23 (A) Name, address, telephone and license number of the RPF that
24 prepared and submitted the Notice of Exemption.

1 (B) RPF certification that no conditions were identified where operations,
2 conducted in compliance with the rules of the Board, would reasonably result in
3 significant adverse effects.

4 (8) The Department shall monitor and report on the statewide use of the
5 exemption, allowed under 14 CCR § 1038(k), including the number of harvest area
6 acres, the areas of application and the degree of compliance. The Department shall,
7 within 180 days of the date that these emergency regulations are filed with the
8 Secretary of State, report its findings, to the Board.

9 Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code.
10 Reference: Sections 4516, 4527 and 4584, Public Resources Code; and *EPIC v.*
11 *California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43
12 Cal. App.4th 1011. *****

13
14 **1052.1**

15 The following are conditions that constitute an emergency pursuant to 14 CCR § 895.1:
16 ***** (b) Trees that are fallen, damaged, dead or dying as a result of wind, snow,
17 freezing weather, drought, fire, flood, landslide or earthquake. *****

18 Note: Authority cited: Sections 4551 and 4552, Public Resources Code. Reference:
19 Sections 4592, 4750, 4750.3 and 4750.4, Public Resources Code.

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